

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

FRAIMAN ENTERPRISES, INC.

Employer

and

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES, MOVING
PICTURE TECHNICIANS, ARTISTS AND
ALLIED CRAFTS OF THE U.S. & CANADA,
AFL-CIO-CLC, LOCAL 182

Petitioner

Case 1-RC-21631

DECISION AND DIRECTION OF ELECTION¹

The Union in this matter seeks to represent a bargaining unit of seven to nine projectionists employed by Fraiman Enterprises, Inc. at the Somerville Theater in Somerville, Massachusetts. Fraiman Enterprises seeks to include two assistant managers in the unit on the ground that they share a community of interest with the projectionists. The Union contends that the assistant managers should be excluded on the grounds that they are statutory supervisors and, in any event, do not share a sufficient community of interest with the projectionists. I find that the assistant managers are nonsupervisory

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

employees, but that they do not share a sufficient community of interest with the projectionists to require their inclusion in the unit.

Supervisory status of the assistant managers

Fraiman Enterprises operates two movie theaters, the Somerville Theater in Somerville, Massachusetts, and the Arlington Capital Theater in Arlington, Massachusetts. Treasurer Melvin Fraiman and his assistant Sherry Belski, who also serves as a talent booker, have an office in Cambridge, Massachusetts. Ian Judge, the general manager of the Somerville Theater, reports to Fraiman. Two assistant managers, Chibuzo Azubuine and Kevin Frost, report to Judge.² The theater employs about seven to nine projectionists and about 16 floor staff employees.

The Somerville Theater has five movie theaters. The largest theater, which has 900 seats, also serves as a venue for concerts and other types of performances. The theater also has a concession stand. The theater operates seven days a week, generally from 1 p.m. to 12:30 a.m. weekdays and 11 a.m. to 12:30 a.m. on weekends, and even later when there are concerts.

Judge is responsible for overall operation of the theater, including inventory control for the concession items, customer service, upkeep of the building, and hiring, firing, training, and supervising staff. He and the two assistant managers work in rotation. The assistant managers work around 40 hours a week, but their schedules and Judge's vary from week to week. Judge tries to take off at least two days a week and tries to ensure that at least one of the assistant managers is there when he is not.

Judge, Azubuine, and Frost share a workspace in a glass-enclosed kiosk in the middle of the theater lobby. Azubuine testified that he spends most of his time on the floor. Azubuine and Frost have keys to the theater and open and close it when Judge is not there. They handle customer complaints and can return money to dissatisfied customers or give them passes to return to the theater. They count the cash receipts at the end of the day, depositing some at a bank and putting the rest in a safe.

The floor staff sell tickets, take tickets, sell concessions, and cleans the theater. They do not have a set assignment. The assistant managers can assign the floor staff to the various stations. Azubuine testified that he usually lets the employees work it out among themselves, but he assigns them to a position if there is a disagreement, and he makes such assignments based on who he thinks is better at a certain position. The assistant managers fill in by selling tickets or concessions whenever needed.

² Judge began working as general manager in June 2002. Azubuine was hired as a floor staff member in September 1998 was promoted to assistant manager sometime before Judge was hired. Frost was hired as a floor staff member in July of 2002 and was promoted to assistant manager in mid-March 2003, following the departure of assistant manager Jen Souza.

The projectionists are responsible for running the movies. Each of the five theaters has a dedicated projector. The projectionists place the film on platters. The film is fed through the projector and then on to a platter at the other end. On Thursdays, the new movies for the following week arrive. On that day, the projectionists must “make up” the new movies, which involves splicing small reels together onto a big reel, and they also “break down” the prior week’s movies, which involves taking them apart. Some, but not all, of the projectionists are trained to do this. The projectionists also do minor maintenance on the projection equipment, such as replacing light bulbs, cleaning, and lubricating the parts.³

Judge schedules employees for work on a weekly basis, after they note their availability and requests for time off.⁴ It appears from one of the weekly schedules that he schedules anywhere from three to eleven floor staff and two to three projectionists each day, although they are scheduled for different hours. Judge makes up the payroll sheets and forwards them to the company comptroller.

The assistant managers have authority to call in replacements when one of the projectionists or floor staff employees is absent. This happens occasionally. They call other employees from the list of staff and ask if they are available to cover.

The assistant managers have authority to send employees home early if there is not enough work. Azubuine testified that he has never told employees they must go home early when it is slow, but if things are slow and employees ask him to leave early, he has allowed it. If there are no customers for the last movie showing, Azubuine may tell the projectionists to wait ten minutes before starting the film and not to show it at all if no one shows up after that time. He is supposed to consult Judge or Mel Fraiman in these circumstances and usually does, but he has infrequently done this without contacting them first.

With respect to the role of the assistant managers in discipline, Judge testified that last summer he created the “Somerville Theater Employee Standards Agreement,” which is a list of rules that employees agree to follow, along with an acknowledgement that failure to comply with the rules can lead to suspension or termination. The agreement is to be signed by “employee” and “manager.” Judge held a meeting where all employees then working signed it. The Union submitted into evidence one such agreement signed on December 31, 2002 by an employee and by Azubuine, as “manager.” Judge testified that he has not had new hires sign this agreement since that time.

³ A vendor repairs the projection equipment in case of a serious electrical or mechanical problem. Azubuine is authorized to call the vendor but usually gets Judge’s approval before having the projectors repaired. One time he called the vendor on his own when he could not reach Judge.

⁴ Judge testified that he has never laid anyone off for lack of work, although there have been weeks when he had no hours for certain employees and did not schedule them for work.

The assistant managers have authority to verbally reprimand employees if they are not doing their job. Azubuine and Frost have verbally warned floor staff from time to time to get off the phone or to get back to work. Last month, projectionist Mark Laskey left the theater during a show for ten or fifteen minutes to pick up a sandwich. While he was gone, there was a problem with the lights, which assistant manager Kevin Frost did not know how to fix. When Laskey returned, Frost asked him to let him know if he is leaving the theater and where he is going. Frost considered this to be a verbal warning.

Assistant managers have authority to issue written warnings to floor staff employees and projectionists. Azubuine has issued only one written warning, which he issued on May 5, 2003 to floor staff employee Franklin Quintanilla for being 45 minutes late for work. Frost witnessed the warning. Azubuine did this without consulting Judge, but Judge testified that he investigates warnings before he files them away, asking both the assistant manager and the affected employee for their version of the story. Judge has not rescinded any warnings thus far. Frost has not issued any warnings, as he has not yet had occasion to do so, and Azubuine testified that he never saw the previous assistant manager, Souza, issue a written warning.

Judge testified that assistant managers can suspend employees and take them off the schedule, but there is no evidence that an assistant manager has ever done so. On October 13, 2002, Judge suspended projectionist Paul Gately for two weeks for tardiness and for arriving to work inebriated. Azubuine signed the disciplinary form as a witness. Judge did not ask Azubuine for a recommendation as to what discipline should be imposed.

Azubuine once had authority to terminate employees, but that is no longer the case. Judge testified that before Judge's arrival, Azubuine dismissed some employees with the authorization of "the office." He gave no examples, nor is there any evidence as to the precise role of "the office" in these terminations. In December 2002, after Judge began as general manager, Azubuine fired employee Rachel Amerault⁵ for failure to report to work without calling in. Thereafter, on December 3, 2002, Judge issued a memo to Azubuine and then-assistant manager Jen Souza in which he wrote, "Effective immediately, no employee of the Somerville Theater may be hired or dismissed by an assistant manager without my authorization. If you believe an employee has given cause to be terminated, you may send that employee home and arrange for him/her to meet with me at the soonest possible time." Judge has fired one employee, projectionist Paul Gately, but he testified that Azubuine was not directly involved in the termination.

⁵ The record does not reveal whether she was a floor staff employee or projectionist.

Judge testified that he does the hiring at the theater and that no one else has the authority to do so. As noted above, he issued a memo to the assistant managers on December 3, 2002, stating that they may not hire employees without his authorization.⁶ When there are vacancies, Judge posts a “now hiring” sign. Sometime applicants come in off the street. The theater is a very informal place, and current employees, including assistant managers and other employees, often recommend their friends to him.⁷ He may hire employees on the spot if a current employee gives them a good reference; otherwise, he checks their references.

Judge testified that Azubuine may talk to prospective employees first and refer them to Judge, but Azubuine’s meeting with them does not determine whether they will be hired. Azubuine testified that if an employee recommends a friend for a job, he meets them to give them an application and tells them when they can come by to see Judge. Frost testified that he has authority to recommend hiring, as does any employee at the theater. He recommended that Judge hire floor staff employees during the period that he, himself, was a floor staff employee. He has not recommended that Judge hire anyone since he became an assistant manager.

Regarding the hire of projectionist Jim Kane, Kane testified that his roommate, projectionist Geoffrey Downs, took him to see Azubuine about a projectionist’s position in late September or early October 2002. Azubuine had him fill out an application and told him to start working with Downs right away. He went straight to the projectionist’s booth, and was paid to work from 11 a.m. to 6 p.m., although Judge did not arrive at the theater until 4 p.m. that day.

Azubuine testified that he did not hire Kane on the spot. When Downs told him he had a friend who wanted to be a projectionist, Azubuine told him that he had to check with Judge. Azubuine does not know if Kane met with Judge first, but Azubuine recommended Kane for the job, and Judge gave him “the green light.” Azubuine does not recall if he met with Kane before discussing the matter with Judge.

⁶ Azubuine testified during the two-month period prior to Judge’s arrival, there was no general manager, and he and then-assistant manager Nicole Barry assumed some of the general manager’s responsibilities. He was not upgraded to acting manager during that time, because it was anticipated that there would be only two weeks without a general manager. During that period, he hired projectionist Geoffrey Downs and floor staff employee Jennifer Altieri. He testified that he did not hire any floor staff under the previous general manager and has not hired any floor staff since Judge’s arrival.

⁷ In this regard, Azubuine recommended that Judge hire floor staff employees Marissa Calisis, Sophia Gavrielidis, Kim Sheppard, and Jacqueline Martin, and Judge accepted his recommendation.

Judge testified that Downs told him he had a friend interested in working as a projectionist. Judge replied that if he was a friend of Downs, that was fine, and he gave him the “o.k.” to tell Kane. Judge did meet Kane, but it was not a formal interview. Azubuine and Kane may have talked before Judge met Kane, but Azubuine is not authorized to hire employees. Judge may have told Azubuine that Downs had a friend who would be starting work, so it would be fine for him to start if he saw him, but he did not really recall this. If Judge gave Azubuine that authorization, it would have been before he met Kane, because Judge trusted Downs.

The assistant managers spend some time performing the work of the projectionists. Judge and Azubuine testified that Azubuine runs a projector at least once a week and sometimes makes up and breaks down movies. He does this either if Judge is unable to schedule a projectionist or if a projectionist who was scheduled to work is absent and he cannot find a replacement.⁸ Judge is currently training Frost to run the projector, but he has not yet filled in as a projectionist or made up and broken down films. Frost testified that he does not consider projectionist work to be a regular part of his duties at this time.⁹

Judge is a salaried employee. In addition to his salary, Judge receives a monthly commission based on concession sales. Azubuine and Frost are paid on an hourly basis. Azubuine earns \$11 per hour, and Frost earns \$8.75 per hour.¹⁰ At his own discretion, Judge gives Azubuine a certain percentage of the monthly commission, which is taken out of his own share. Frost does not currently receive a percentage of the commission, but Judge testified that he could be eligible for it in the future if Judge deems it appropriate. The other employees are hourly paid and earn between \$6.75 and \$7.75 per hour. Azubuine and Frost occasionally work more than forty hours per week and are paid on an overtime basis for those hours. The projectionists and floor staff never receive overtime pay, since they are all part-time employees. The assistant managers, projectionists, and floor staff all punch a timeclock.¹¹

⁸ Projectionists Mark Laskey and Jim Kane testified that they have never seen Azubuine run a projector or make up and break down films. Azubuine explained that he has never filled in as a projectionist during one of their shifts. He has also come in after hours or early in the morning to make up films.

⁹ The prior assistant manager, Jen Souza, did not wish to run the projectors and was not required to.

¹⁰ Payroll records indicate that Judge’s biweekly salary, not counting his commission, is \$1400, or \$36,400 annually. Assuming a 40-hour workweek, Azubuine earns \$22,880 per year and Frost earns \$18,200 per year.

¹¹ Projectionist Jim Kane testified that the timeclock stopped working a couple of months ago, so he has been writing down his hours since that time.

With respect to benefits, Judge receives health and dental insurance and a “T” pass. The assistant managers, projectionists, and floor staff do not receive these benefits, but they are all entitled to free popcorn, free soda, and free movie passes. Azubaine testified that he has no paid vacation or sick days, and there is no evidence that any of the other employees receive such benefits. The floor staff wear a Fraiman Enterprises shirt. The projectionists and assistant managers are not required to wear this shirt and generally do not.

Conclusion

Pursuant to Section 2(11) of the Act, the term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.¹² The status of a supervisor under the Act is determined by an individual’s duties, not by his title or job classification. New Fern Restorium Co.¹³ The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care¹⁴ The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.¹⁵

The Union contends that the assistant managers are statutory supervisors because of their authority to assign work, responsibly direct employees, suspend and discipline employees, and effectively recommend hiring. I find that the Union has failed to demonstrate that the assistant managers possess statutory authority over the floor staff and projectionists.¹⁶ There is no evidence that the assistant managers use independent judgment in assigning work or responsibility directing employees. It is the general manager, rather than the assistant managers, who schedules their hours. The assistant managers’ authority to find replacements for absent floor staff or projectionists does not confer supervisory authority, where the assistant managers simply call from a pre-established list of staff and ask for volunteers. Loyalhanna Care Center¹⁷ (charge nurses

¹² 273 NLRB 1677, 1689 (1985).

¹³ 175 NLRB 871 (1969).

¹⁴ 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

¹⁵ 308 NLRB 101, 102 (1992).

¹⁶ I note at the outset that the floor staff employees are not in the petitioned-for bargaining unit.

¹⁷ 332 NLRB No. 86, slip op. at 3 (2000).

who call in off-duty employees in place of absentees do not use independent judgement, where they use a preexisting call list and there is no evidence they can compel employees to overstay a shift or work outside their normal schedule). The assistant managers' authority to permit employees to leave early upon request if things are slow does not establish supervisory status, particularly where there is no evidence that they have ever denied such a request. Azusa Ranch Market¹⁸ (authority to allow employees to leave early on request is routine and insufficient to confer supervisory status); cf. Joseph Victori Wines, Inc.¹⁹ (individual who refused permission to employees who wanted to leave early is a supervisor). The floor staff employees generally decide among themselves who will sell tickets, who will sell concessions, and so on, for the shift. To the degree that the assistant managers do designate their functions for the shift, I find that such assignments require no independent judgment. Thus, notwithstanding Azubuine's testimony that he makes such assignments based on who he thinks is better at a certain position, I find that the various jobs are all unskilled and that the floor staff employees are essentially interchangeable.

The assistant managers' role in discipline does not rise to the level of Section 2(11) authority. The fact that Azubuine signed one of the "Employee Standards Agreements" as "manager" does not confer supervisory authority, since he did not establish the rules set forth in the agreement, and the agreement has no bearing on the assistant managers' authority to enforce the rules. The power to verbally reprimand employees is too minor to constitute statutory authority. Ohio Masonic Home, Inc.²⁰ The assistant managers' authority to issue written warnings is insufficient to make them supervisors, since Judge investigates warnings himself by talking to the affected employees before filing them away. Further, there is no evidence that receipt of a written warning or even a number of warnings results in any personnel action. Northcrest Nursing Home²¹ (charge nurses who issue written warnings are not supervisors, since the warnings by themselves do not lead to personnel action, and no action is taken without independent investigation or review by others). Although Judge testified that assistant managers can suspend employees, there is no evidence that an assistant manager has ever done so, and the assistant managers played no role in the suspension of the one employee whom Judge suspended.²² While Azubuine may once have had authority to terminate employees, it is clear that, since the issuance of the December 3, 2002 memo, assistant managers no longer have such authority.

¹⁸ 321 NLRB 811, 812 (1996).

¹⁹ 294 NLRB 469, 472 (1989).

²⁰ 295 NLRB 390, 394 (1989).

²¹ 313 NLRB 491, 497 (1993).

²² Since Judge testified that he investigates even warnings himself, it appears likely that he would also investigate an assistant manager's decision to suspend an employee.

Judge made clear in his December 2002 memo that only he may authorize hiring. The assistant managers' authority to effectively recommend the hire of new employees appears to be no greater than that of the projectionists and floor staff. In this regard, it appears that, although Azubuine may sometimes meet with applicants first, he refers them to Judge, who generally interviews applicants himself. Ryder Truck Rental, Inc.²³ (cannot be said that employees whose status is at issue effectively recommend hiring where their superior participates in the interview process). If a current employee gives the applicant a good reference, Judge may hire them on the spot without checking other references, or, as in the case of Jim Kane, may even agree to their hire before interviewing them, but that is true whether the referring employee is a floor staff member, projectionist, or assistant manager.²⁴

While it is true that the assistant managers are in charge of the theater two days a week in Judge's absence and that they are higher paid than the projectionists, these are merely secondary indicia that are insufficient by themselves to establish supervisory status when there is no evidence presented that an individual possesses any one of the several primary Section 2(11) indicia. Ken-Crest Services.²⁵

Community of interest between the assistant managers and the projectionists

In addition to the above facts regarding duties, skills, supervision, interchange between the assistant managers and projectionists, and working conditions, the record reveals the following:

The Union's business manager, Kenneth Eisenberg, testified that projectionists are a craft. In this regard, he testified that the Massachusetts Department of Public Safety licenses projectionists upon passing a written examination.²⁶ He testified that the Union trains projectionists, which takes several weeks or months, and that they can fix equipment, although repairs to wiring are handled by electricians. Judge testified that he is not sure if the projectionists are supposed to be licensed. Judge is not licensed, although he operates the projection equipment himself. He does not know if the assistant

²³ 326 NLRB 1386, 1387-1388 fn. 9 (1998).

²⁴ With respect to the hiring of Jim Kane, Kane's testimony that he began to work even before meeting Judge may be accurate, but he was not privy to the decision-making process. It appears that Judge told the projectionist Geoff Downs, who recommended his roommate, Kane, that if Kane was a friend of Downs, that was sufficient for Judge to hire him. Azubuine may have been the person who notified Kane that he was hired, but that was only after Judge told him to, and it was based on Downs' reference. Thus, it was a projectionist and not an assistant manager who effectively recommended the hire of Kane.

²⁵ 335 NLRB No. 63, slip op. at 3 (2001).

²⁶ In its post-hearing brief, the Union cites M.G.L.c. 143 §75, under which individuals who operate a "cinematograph" or similar equipment must be licensed by the state.

managers are licensed. Judge has trained projectionists and testified that it takes only about two to eight shifts to learn how to operate the equipment.

As for pattern of organizing in this industry, the Union has contracts with several area theaters, including eight theaters that are part of international chains and one that is part of a small chain. Eisenberg, who does contract negotiation and administration on behalf of employees at those theaters, testified that these bargaining units include only projectionists and exclude managers or assistant managers. The record does not reveal the degree to which the assistant managers at these other theaters perform projectionists' duties.

Conclusion

It is well settled Board law that a union need not seek to represent only the most appropriate unit or most comprehensive unit, but only an appropriate unit. Transerv Systems,²⁷ Morand Bros. Beverages Co.²⁸ In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. Dezcon, Inc.²⁹ In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. Overnite Transportation Co.³⁰ The Petitioner's desire as to the unit is a relevant consideration, though not dispositive. Florida Casino Cruises.³¹

While a unit of projectionists and assistant managers might also be appropriate, I find that the assistant managers' community of interest with the petitioned-for projectionists is insufficient to compel their inclusion in the unit. In reaching this conclusion, I acknowledge that there are some similarities between the assistant managers and projectionists, in that they share common supervision by Judge, are hourly paid, punch a timeclock, and have no benefits such as insurance or paid time off. These similarities are outweighed, however, by other more important factors that distinguish the two groups. The assistant managers and projectionists perform different duties. Unlike the part-time projectionists, the two assistant managers are full-time employees and

²⁷ 311 NLRB 766 (1993).

²⁸ 91 NLRB 409 (1950).

²⁹ 295 NLRB 109, 111 (1989).

³⁰ 322 NLRB 723, 724, citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

³¹ 322 NLRB 857, 858 (1997), citing Airco, Inc., 273 NLRB 348 (1984).

eligible for overtime pay. They are higher paid, and one of them is paid, in part, on a commission basis. The contact between the two groups is limited, given that the projectionists work in the projection booths and the assistant managers spend most of their time in the lobby area. There have been no permanent transfers between the two groups; both assistant managers were previously floor staff employees. There is limited temporary interchange between them in that Azubuine fills in as a projectionist about once a week, and Frost will likely fill in once he is fully trained as a projectionist, but the projectionists never fill in as assistant managers.³² Finally, the pattern of bargaining in the area for this industry supports the appropriateness of a separate unit of projectionists.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All projectionists employed by the Employer at the Somerville Theater in Somerville, Massachusetts, but excluding assistant managers, all other employees, clerical employees, confidential employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been

³² In its post-hearing brief, the Union argues that Azubuine's testimony that he makes up and breaks down films is not credible. I note that representation case hearings are non-adversary proceedings which do not call for credibility findings. In any event, Azubuine's testimony that he performs such work about once a week is not inconsistent with the testimony of the projectionists who testified that they never observed him perform such work.

I also decline to rely on the Union's argument that the assistant managers and projectionists have different skills, because projectionists must have a license, while assistant managers do not need a license. Notwithstanding the existence of a state law requiring such a license, there is no evidence that any projectionist at this theater is licensed, and it does not appear that the theater requires it, as Judge was not even aware that projectionists are supposed to be licensed. Assuming such a license is required, such a requirement would appear to apply with equal force to the assistant managers, who also run projection equipment, albeit not on a full-time basis.

permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the U.S. & Canada, AFL-CIO, CLC, Local 182.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.;³³ NLRB v. Wyman-Gordon Co.³⁴ Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.³⁵ In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before June 5, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

³³ 156 NLRB 1236 (1966).

³⁴ 394 U.S. 759 (1969).

³⁵ 315 NLRB 359 (1994).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 12, 2003.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

177-8560-1500
177-8580-7800
440-1780-2067

Dated at Boston, Massachusetts
this 29th day of May 2003.

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